IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.224 of 1995

A N D

APPEAL ORDER NO. 225 OF 1995

Trustees of Late Ardeshir Khodadad
Irani Trust:
Mr.Gillan F. Irani & ors. .. Appellants

versus

Themul J. Postwala & Anr. .. Respondents

...

Mr.K.Y. Mandlik with Mr.H.T. Attar i/b M/s.Hooseini Doctor & Co. for the appellants.

Mr.Hitesh Jain with Ms.Suman Jain for the respondents

CORAM : B.H. MARLAPALLE,J

DATED : 5th September 2005

P.C.:

1. These appeals arise from the common order passed by the learned Vth Additional District Judge at Pune at 26th April 1994. Application no.500 of

1993 was filed for restoration of the Civil Appeal No.778/85 and application no.501 of 1993 was filed for restoration of the Civil Appeal no.779/85. Both the applications came to be rejected and these appeals were pending for admission for the last about 10 years. Though Notice before admission was issued on 1st August 1995, the appeals remained under objection or about 8 years, before this Court.

2. The learned Judge of the lower Appellate Court noted that the appeals had arisen in the year 1985 and during the period of about 8 years, they were adjourned form time to time at the instance of the appellant. By way of last chance, the appeals were fixed for hearing on 5th July 1993 on which date again an adjournment was sought. The Court reluctantly granted the adjournment to 26th July 1993 but by imposing the costs quantified at Rs.25/- in each case. However, when the appeals were taken up at about 11.30 on 26.7.1993, neither the appellants nor their Advocates remained present and ultimately, the Court dismissed the appeals for default. i.e. for the non appearance of the parties and their counsel as well as non payment of costs.

3. The restoration applications were not filed on the same date i.e. 26.7.1993 and subsequently when the restoration applications were moved, it was contended that one of the appellants was not keeping good health and medical certificate was attached to the application. The lower Appellate Court noted that the medical certificate was unreliable and in any case, the costs which were imposed were also not remitted. An affidavit of one Mr. Gillani, dated 15th March 1994, stated that he was present in the Court on 26th July 1993 at about 12.30 noon but there was no explanation from the other three appellants and their counsel. If the affiant appeared before the lower appellate Court on the same day, there was no reason why an applications on that day alone could not be filed and the affiant's explanation that he could not come to the Court due to loose motions, was found to be false.

4. The reasoning set out by the Lower Appellate Court in refusing to restore the appeals cannot be held to be perverse and the Court has considered all the relevant issues. It is obvious that the

appellants were recklessly negligent not only before the lower Appellate Court but indeed before this Court as well. These appeals must, therefore, fail.

5. In the premises, the appeals are dismissed in limine.

B.H. MARLAPALLE, J